

RESIDENTIAL MORTGAGE BROKERS AND LENDERS
CHAPTER 80-11-4
LICENSING

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80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.

(1) Subject to the exceptions below, any mortgage broker license issued, reinstated or renewed after July 1, 2000 to an applicant, shall be subject to the requirements for experience or education. Such requirements shall apply to natural person applicants, or if to other entities or persons, to the operating manager who administers the operations in this state (collectively, "applicant").

(2) Applicants for a new license or for reinstatement of a previous license shall elect and meet either the experience or the education requirements before a license will be issued or reinstated.

(3) Exception for certain licensees for initial education or experience requirements.

(a) Any mortgage broker license issued to an applicant prior to July 1, 2000, which license remains continuously valid without interruption until renewed on July 1, 2001, shall be subject to either one year of verifiable experience or applicant must meet the education requirements in this rule.

(b) Applicants for renewal eligible for this exception, in the case of a natural person, need only state on the application that the license was issued on or before July 1, 2000 and has remained continuously valid without interruption since July 1, 2000. In the case of other entities or persons, applicant must demonstrate that the current operating manager has completed either one year of experience, verified according to this rule, or the education requirements.

(4) Experience Requirements:

(a) Applicant must complete two (2) years of verifiable experience working full time for a licensed mortgage broker or lender.

(b) Experience shall consist of directly soliciting, processing, placing and negotiating mortgage loans for others.

(c) The following information must be submitted at the time of application or renewal by an applicant who wishes to qualify by using experience:

1. Letter on letterhead from previous or current employer certifying completion of two (2) years work experience directly soliciting, processing, placing, and negotiating mortgage loans for others. Telephone number of employer must be provided;

2. Copy of IRS form W-2 for the tax years covering the experience requirement;
3. Completed and signed IRS form 4506 which enables the Department to verify the W-2, and;
4. Other documents or information required by the Department necessary to verify completion of the experience requirement. Experience requirement may be verified by the Department directly with the employer and tax authorities.

(d) If applicant's experience is received from an employer not required to be a Georgia Residential Mortgage Act licensee, such applicant must also complete four (4) hours of education provided by an approved school in Georgia, which education specifically covers the Georgia Residential Mortgage Act and rules and regulations of the Department.

(5) Initial Education Requirements:

(a) An applicant for a mortgage broker's license must complete a minimum of forty (40) hours of prescribed courses from a Department or Nationwide Mortgage Licensing System and Registry (NMLSR) approved provider of mortgage training. A mortgage broker that is also making an application for a mortgage loan originator's license may apply the twenty (20) hours of required mortgage loan originator pre-licensing education towards its mortgage broker license.

(b) Course work taken pursuant to this rule shall pertain to basic technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations; fraud detection; and the prevention of fraud in the mortgage industry.

(c) Applicant must submit proof of completion of the required education courses in the form of a certificate of completion issued by a Department approved provider of mortgage education courses. This requirement may be verified by the Department directly with the provider. The Department will make a list of such providers available on its website.

(6) Experience requirements must have been completed within the three (3) calendar year period immediately prior to the date of approval of the license. Initial education requirements must have been completed within the one (1) calendar year period prior to the date of approval.

(7) Continuing Education. Applicants for renewal of a broker's license that are not subject to the mortgage loan originator's license requirements shall meet the continuing education requirements set forth in subparts (a) through (i) of this rule. Mortgage broker/processor licensees who maintain a mortgage loan originator's license must meet the continuing education requirements set forth in Rule 80-11-5-04(1)(b).

(a) Applicant must complete on an annual basis and by October 31 each year a minimum of eight (8) hours of continuing education dealing with elements of the mortgage brokering process, federal law, federal rules and regulations, Georgia law, Georgia rules and regulations, applications and required documentation, fraud, ethics or other topics pertinent to the operation of a mortgage brokering business in Georgia. At least one (1) hour shall be concentrated on fraud detection and prevention. A mortgage broker that is also a mortgage loan originator may apply the eight (8) hours

of annual continuing education required by O.C.G.A. § 7-1-1004(g) to the continuing education requirement contained in this rule.

(b) Except as provided in this rule, continuing education must be completed with a Department or NMLSR approved provider of mortgage education classes and be timely reported to the NMLSR pursuant to NMLSR requirements.

(c) Seminars, courses or classes sponsored and approved by mortgage-related state and federal regulatory agencies, a NMLSR approved provider, the National Association of Mortgage Brokers (NAMB), state and federal regulated lenders and their affiliates or professional associations, all of which must be recognized by the Department as proper providers of education requirements (“approved providers”). Requirements may be satisfied at monthly association meetings, conventions, seminars or through electronic means provided the subject meets the requirements of this Rule. For purposes of continuing education, instructors and speakers at seminars, conventions or classes sponsored by approved providers will not be required to seek Department approval as approved providers of mortgage education classes. Education providers shall assign a certificate number to each attendee of a seminar, course or class. In state providers must keep lists of attendees for at least two (2) years.

(d) Each licensed broker must maintain a listing of the courses completed or seminars attended, the date attended, the name of the instructor or speaker, the name of the sponsoring association, the course agenda and the credit hours earned for each course or seminar. Credit hours may not be earned or approved in less than one (1) hour increments. Such information may be requested as part of the renewal application.

(e) The Department will not be required to verify that each applicant has completed the required Department continuing education hours prior to issuance of a renewal license. However, the Department may at any time and at its discretion select any number of renewal applications to verify that the continuing education requirements have been met. Verification of continuing education hours may be performed as a part of the examination process. Licensees must maintain documentation for five (5) years that verifies the continuing education hours attained. The Department may request proof of attendance or verification from the applicant, sponsor, instructor or speaker.

(f) The Department may at its discretion accept continuing education hours completed between November 1 and December 31 of each year as part of the license renewal requirement. However, licensees/applicants that fail to attain at least eight (8) continuing education hours by October 31 of each year will be subject to a one thousand dollars (\$1,000) fine.

(g) Upon submitting an application to renew a license, failure to complete eight (8) continuing education hours by October 31 together with failure to complete the hours by December 31 with payment of the one thousand dollars (\$1,000) fine shall result in inability to renew the license, or other administrative action.

(h) For purposes of continuing education requirements “applicant” shall mean an individual owner of the licensee, or a person designated and employed by the licensee as the primary supervisor or manager of the licensee’s mortgage business. The intent of the rule is that the continuing

education for a mortgage broker's license must be obtained by a person who directs the affairs of the mortgage business.

(i) Newly licensed brokers who obtain their license between January 1 and October 31 of any year will be required to have eight (8) hours of continuing education credits in order to qualify to renew their license for the next license renewal period. Newly licensed brokers who obtain their license between November 1 and December 31 of any year will be required to complete continuing education credits prior to license renewal. Provisions in subsection (f) and (g) of this rule also apply to such newly licensed brokers.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

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80-11-4.02 Approved Schools.

(1) A school or provider ("school") that wishes to be approved by the department to offer courses eligible to satisfy the mortgage broker education requirement shall apply to the department for approval. Only approved schools may provide such courses.

(2) An approved school must offer credit hours in courses directly related to the mortgage broker process. A list of the required areas of coverage necessary to satisfy the education requirement will be published by the department and may be revised from time to time as the need demands.

(3) An approved school must issue a certificate of completion to each person attending, and must have standards for attendance and test taking and a reasonable method to determine attendance. The school must provide to the department a list of all persons successfully completing the required credit hours.

(4) All approved schools must have qualified instructors, meeting standards established by O.C.G.A. § 7-1-1003.7 and the department, which will be available to the school upon request.

(5) An approved school's official must be available to the department to contact in order to verify completion of education.

(6) An approved school must allow access to Department personnel in order for the Department to perform a review and assessment of the curriculum, books and records, and instruction offered by the school or provider to licensees and/or applicants. Failure to allow such access will result in removal of the school as an approved educational provider.

Authority O.C.G.A. § 7-1-1012; §7-1-1003.7; § 7-1-1004.

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80-11-4.03 Licensing requirements; registrants; exemptions; term for bond.

(1) The Department will take appropriate action against all persons found to be improperly engaging in mortgage brokerage or lending activities without a license or valid exemption. In

accordance with O.C.G.A. § 7-1-1018(a), if proper evidence is provided to the Department within thirty (30) days of the date the Order is issued that shows the person had the proper license or was acting pursuant to a valid exemption at the time noted in the Order, the Order shall be rescinded by the Department.

(2) The exemption from licensing provided pursuant to O.C.G.A. §7-1-1001(14) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:

(a) An employee must be employed by just one licensee or exemptee and work exclusively for that person;

(b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;

(c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis, and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that employers control and are accountable for the actions of their employees; and

(d) An employee may not be paid or compensated for performance of mortgage activity as an independent contractor or on a 1099 basis, except as specifically provided for in paragraph (3) of this rule.

(3) The exemption from licensing provided pursuant to O.C.G.A. §7-1-1001(17) only applies to a natural person acting in the capacity as an independent contractor working under an exclusive written contract for a licensee that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, under conditions and limitations as set forth in O.C.G.A. §7-1-1001(17) and applies only if all of the following criteria are met:

(a) The independent contractor may only work in the capacity of a mortgage broker and may only broker loans to the licensed subsidiary or its affiliates;

(b) The licensee must provide annually, or more often if required by the Department, a list of each of the independent contractors brokering loans for the licensee under this exemption. This list must be submitted electronically in a form prescribed by the Department. The licensee must certify at the time of submission that each independent contractor brokering loans for them under this exemption are working under a current Undertaking of Accountability, in a form prescribed by the Department;

(c) The surety bond required pursuant to O.C.G.A. §7-1-1001(17) must be in full force and effect at all times, unless or until such time as the licensee is no longer licensed. In the event that the licensee is no longer licensed, all independent contractors brokering loans for the licensee as independent contractors under this exemption must cease all mortgage brokerage activity immediately upon termination of said license. In the event that the required surety bond coverage falls below the amounts required by O.C.G.A. §7-1-1001(17), the licensee must immediately provide coverage sufficient to meet the requirements as set forth therein, or the license will be subject to revocation or suspension. Adequacy of bond coverage will be determined annually by the

Department based on the list of independent contractors as provided by the licensee in Rule 80-11-4-.03(3)(b).

(4) Registrants shall complete all information as indicated on the Department's application. Registrants must submit financial information as provided in O.C.G.A. § 7-1-1003.2 and §7-1-1010, are subject to books and records requirements as provided in O.C.G.A. §7-1-1009, and must submit an annual fee to the Department. Registrants must provide updated consumer contact information to the Department, and are responsible for resolving consumer complaints satisfactorily and in conformity with the Department's guidelines and timeframes. Fines will apply for failure to comply with any Georgia mortgage laws or rules.

(5) In addition to the requirements contained in O.C.G.A. §7-1-1003.2 for a bond, the bond requirement for a lender or broker license shall have a stated term of one year or more, and shall expire a minimum of twelve (12) months from the date of issuance, or such longer period as needed to reflect the term of the bond. The bond requirement is continuous in nature. A corporate surety or licensee that does not intend to renew a bond for a subsequent term shall notify the Department of such cancellation pursuant to O.C.G.A. § 7-1-1007(c) no later than thirty (30) days prior to the expiration or cancellation date of the bond. Surety bonds provided to the Department are deemed to be records of the Department and will not be returned to licensees or to the entities by which they were issued.

Authority O.C.G.A. §7-1-61; § 7-1-1003.2; §7-1-1012.

80-11-4-.04 Temporary License. Repealed and Reserved.

80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity, Mortgage Loan Originator Sponsorship Excluded.

(1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from licensing. It is expected that all persons who purchase loans use reasonable diligence to determine whether the entities they do business with are licensed. To that end, the department has provided various means to determine whether an entity is licensed.

(a) A list of current licensees is provided at the department's Internet website. It is updated nightly with the exception of weekends and holidays.

(b) The department's website also contains information pertaining to all denied, revoked and sanctioned licenses. It is updated weekly.

(c) The department responds to telephone inquiries from 8:00 a.m. to 4:30 p.m. each weekday (except holidays) and provides current information to callers.

(2) Obtaining a copy of an entity's annual license shall not be sufficient evidence of a current license since revocation proceedings occur throughout the year.

(3) Failure by a licensee to exercise reasonable diligence to determine whether an entity is licensed may result in a fine or other administrative action, including, but not limited to, license revocation.

(4) The mere act of sponsoring an employee seeking licensure from the department as a mortgage loan originator through the Nationwide Mortgage Licensing System and Registry shall not be regarded in and of itself as engaging in the mortgage business with an unlicensed person as long as the applicant is not performing for the sponsoring licensee or registrant those regulated activities set forth in O.C.G.A. § 7-1-1000(22).

Authority O.C.G.A. § 7-1-1012; § 7-1-1002.

80-11-4-.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required. Repealed and Reserved.

80-11-4-.07 Loan Processors as Brokers.

(1) Mortgage brokers include persons who directly or indirectly solicit, process, place or negotiate or offer mortgage loans for others. A loan processor is a mortgage broker and will require a mortgage broker license to process loans on Georgia real property that meet the definition of "mortgage loan" in O.C.G.A. § 7-1-1001(13).

(2) A loan processor employed as a W-2 employee of a Georgia Residential Mortgage Act licensee who meets all of the qualifications for exemption under O.C.G.A. § 7-1-1001 does not require a license. A loan processor who works as an independent contractor or who owns or controls a company that does loan processing is required to have a license.

(3) Generally, to process a loan means to collect and/or verify from a borrower or other person, information that is necessary to underwrite or to submit for underwriting, a mortgage loan application package. Activities including but not limited to the following may qualify as loan processing:

(a) Reviewing, and processing real estate loan applications.

(b) Ordering, obtaining and evaluating credit reports, real estate appraisals, flood certifications, location surveys, termite inspections, well/septic inspections, surveys, etc.

(c) Ordering, obtaining, and evaluating real property ownership information, including a title insurance policy insuring lender's valid lien position. Title insurance companies that handle only title insurance for a particular loan are not loan processors.

(d) Communicating with applicants as necessary to obtain additional information needed to process a loan.

(e) Obtaining verifications of income, employment, address, etc. as requested by a broker, lender or mortgage loan originator.

(f) Performing escrow account analyses; taking steps required to establish escrow accounts.

(g) Providing certain real estate loan disclosures on behalf of lender.

(h) Compiling and transmitting completed real estate loan application packages to lenders.

(i) Maintaining, collecting, and/or reporting any data necessary to comply with applicable statutory and regulatory requirements.

(4) Persons who are otherwise exempt from licensing in O.C.G.A. § 7-1-1001, so long as they provide only the services contemplated in their exemption, will not be considered loan processors.

Authority O.C.G.A. § 7-1-61; § 7-1-1012.

80-11-4-.08 Restrictions on Employment and Licensing.

(1) No person who has been an officer, director, partner or ultimate equitable owner of a licensee that has had its license revoked, denied or suspended, may perform any of those roles at another licensee or registrant for five years from the date of the final order.

(2) Felony convictions; restrictions on the employee and the licensee:

(a) O.C.G.A. § 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business. The department administers fingerprint checks on officers and directors and others where needed.

(b) O.C.G.A. § 7-1-1004 provides for remedies to “cure” a felony conviction. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a person with an unremedied felony conviction subjects a licensee to revocation of its license.

(c) If a licensee discovers that an employee or director/officer is a felon who has not satisfactorily “cured” the conviction, the violation of O.C.G.A. § 7-1-1004 must be immediately corrected or the license will be subject to revocation. Such individuals with felony convictions are ineligible for an employee exemption and are in violation of O.C.G.A. § 7-1-1019, also a felony, and O.C.G.A. §§ 7-1-1004 and 7-1-1002. The licensee employer is in violation of O.C.G.A. §§ 7-1-1004 and 7-1-1002.

(d) A cease and desist order to a person for failure to meet the employee exemption due to a violation of the felony provisions of O.C.G.A. § 7-1-1004 shall become final in 30 days without a hearing. Such a person must show within those 30 days, by certified court documents that the record is erroneous, or, that the “cure” provisions in O.C.G.A. § 7-1-1004 were completed prior to employment, in order to stop the order from becoming final. In the event such proof is provided, the order will be rescinded.

(3) Cease and desist orders may be issued against persons required to be licensees or registrants or against employees of those parties. All of the provisions of O.C.G.A. § 7-1-1018, including injunction, apply to actions against all such persons.

(4) The Department may regularly publish on its website, or through other means, information identifying persons and natural persons to whom final administrative actions have been issued.

Authority O.C.G.A. §§ 7-1-61; 7-1-1004; 7-1-1012, and 7-1-1018.

80-11-4-.09 Challenges to Information Entered into the Nationwide Mortgage Licensing System and Registry.

A mortgage broker or lender licensee or registrant may challenge information entered by the Department into the Nationwide Mortgage Licensing System and Registry. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee or registrant with a written reply that shall be the agency's final decision in response thereto.

Authority O.C.G.A. § 7-1-1004.2.